

ENVIRONMENTAL COVENANT

[Name of Property owner(s)] (hereinafter "Grantor(s)") grants an Environmental Covenant (hereinafter "Covenant") this ____ day of _____, 200_ to the following Holder(s) pursuant to KRS Chapter 224 Subchapter 80: [List all Grantors and all PRPs] (hereinafter "Grantees")

WHEREAS, Grantor(s) is[are] the owner of certain real property located at [Address], (hereinafter "the Property") more particularly described in Deed Book _____ Page ____ of the _____ County Clerk's office as follows:

(Legal description)

WHEREAS, this instrument is an Environmental Covenant developed and executed pursuant to KRS 224.80-100 to KRS 224.80-210;

WHEREAS, [pursuant to Agreed Order File No. _____ (if it is)], the Property is the subject of enforcement and/or remedial action pursuant to the [INSERT STATUTORY/REGULATORY AUTHORITY];

WHEREAS, a release/disposal of [identify the hazardous substances/waste] has occurred on the Property. The release consisted of approximately ____ [if known] amount. [If the release/disposal only impacted a particular portion of the Property then: "More specifically, the release occurred on and impacted the area of the Property (hereinafter "the Impacted Area") more particularly described as follows:

[Metes and Bounds Description of Impacted Portion of the Property]

WHEREAS, Grantor(s) [and if applicable, particular Holder(s) or other Persons] has[have] proposed a Corrective Action Plan [or Corrective Measures Implementation Plan or closure/postclosure plan] (hereinafter "the Plan") to correct the effects of the release/disposal which includes controlling exposure to the hazardous waste, hazardous constituents, hazardous substances, pollutants, or contaminants by restricting the use of the Property and the activities on the Property;

WHEREAS, An estimated concentration of _____ parts per million of _____ (HSPC) will remain on the Property after implementation of the Plan;

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by placing restrictions on the Property to reduce the risk to human health to below the target risk levels for those hazardous wastes, hazardous constituents, substances, pollutants, or contaminants that remain on the Property. In particular, [provide summary description of remedy including any monitoring requirements, pathways of exposure and limits on exposure including the rationale for various restrictions in the covenant]; and

WHEREAS, further information concerning the release and the activities to correct the effects of the release may be obtained by contacting the Custodian of Records of the Kentucky Division of Waste Management at 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Records concerning this property may be found under [file number _____/Release Reporting number _____] and TEMPO # _____.

NOW, THEREFORE, Grantor(s) hereby grants this Environmental Covenant to the Holder(s), and declares that the Property shall hereinafter be bound by, held, sold, used, improved, occupied, leased, hypothecated, encumbered, and/or conveyed subject to the following requirements set forth in paragraphs 1 through 3 below:

1. DEFINITIONS

A. Owner. “Owner” means[Name of Property Owner], his/her/its successors, assigns and heirs in interest.

B. Residential Use. “Residential Use” includes single family or multi family residences; child or adult care facilities; nursing home or assisted living facilities and any type of educational purpose for children/young adults in grades kindergarten through twelfth grade.

2. USE RESTRICTIONS

A. Prohibited Uses. The Property shall not be used for any of the following purposes:

i. No residential use of the Property shall be permitted.

ii. (Other restrictions applicable to this property)

B. Prohibited Activities.

i. Groundwater at the Property shall not be used for drinking or other domestic purposes.

ii. Except as necessary to protect human health, safety or the environment, no action shall be taken, allowed, suffered, or omitted on the Property if such action or omission is reasonably likely to:

- a. Create a risk of migration of hazardous substances, pollutants or contaminants or a potential hazard to human health or the environment; or
- b. Result in a disturbance of the structural integrity of any engineering controls designed or utilized at the Property to contain hazardous substances, pollutants or contaminants or limit human exposure to hazardous substances, pollutants or contaminants;
- iii. Disturbance of the cap. Prior to any disturbance of any approved cap placed on the Property, [or Impacted Area, if applicable] the Owner(s) shall submit to the Director, Kentucky Division of Waste Management a written rationale for the disturbance and detailed plans of the proposed construction for their review and written approval. No such disturbance is permitted without this prior written approval.
- iv. Soil Disturbances. Soil at the property [or Impacted Area, if applicable] shall not be disturbed in any manner inconsistent with the approved Plan without the Owner(s) obtaining prior approval of the Director, Kentucky Division of Waste Management.
- v. Construction. No building shall be constructed on the Property [or Impacted Area, if applicable] without the Owner(s) obtaining prior approval of the Director, Kentucky Division of Waste Management.
- vi. [Other Activity Restrictions applicable to the Property]

3. **GENERAL PROVISIONS**

A. Restrictions to Run with the Land. This Environmental Covenant runs with the land pursuant to KRS 224.80-140; is perpetual unless modified or terminated pursuant to the terms of this Covenant; is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof; and inures to the benefit of and passes with each and every portion of the Property; and binds the Owner(s), the Holder(s), all persons using the land, all persons, their heirs, successors and assigns having any right, title or interest in the Property, or any part thereof who have subordinated those interests to this Environmental Covenant, and all persons, their heirs, successors and assigns who obtain any right, title or interest in the Property, or any part thereof after the recordation of this Environmental Covenant.

B. Conveyances of the Property. Owner(s) shall notify the Director of the Kentucky Division of Waste Management at least thirty (30) days in advance of any proposed grant, transfer, or conveyance of any interest in any or all of the Property. Notice shall include the name address and telephone number of the prospective transferee, a copy of the proposed deed or other documentation

evidencing the conveyance, and a survey map that shows the boundaries of the Property being transferred.

C. Incorporation into Deeds and Leases. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN
ENVIRONMENTAL COVENANT, DATED _____, 200_,
RECORDED IN THE OFFICIAL RECORDS OF THE
_____ COUNTY CLERK'S OFFICE IN DEED
BOOK _____, Page _____.

D. Zoning Changes. Owner(s) shall notify the Director, Kentucky Division of Waste Management simultaneously when any application is submitted to a local government for a building permit for the Property. Owner(s) shall notify the Kentucky Division of Waste Management of any proposed change in the land use for the Property.

E. Compliance Certification. Owner(s) shall submit an annual report to the Director of the Kentucky Division of Waste Management, on the anniversary of the date this Covenant was signed by the Grantor(s), detailing the Owner(s) compliance, and any lack of compliance with the terms of the Covenant.

F. Right of Access. Owner(s) hereby grants the Kentucky Energy and Environment Cabinet, its agents, contractors and employees (and any other Holders or Parties to this Covenant (i.e. PRPs)) the right of access to the Property for implementation or enforcement of this Environmental Covenant.

G. Representations and Warranties. Grantor(s) hereby represents and warrants to the other signatories hereto [select as appropriate]:

i. that the Grantor(s) has [have] the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;

ii. that the Grantor(s) is [are] the sole owner(s) of the Property and holds fee simple title which is free, clear and unencumbered; (If applicable)

iii. [to the extent that other interests in the property exist] the Grantor(s) or [Name of other person that owns the interest] has[have] agreed to subordinate his/her/its interests in the Property to the Environmental Covenant, pursuant to KRS 224.80-120, and the subordination agreement [attached hereto as Exhibit ____ or recorded at _____];

iv. that the Grantor(s) has[have] identified all other parties that hold any interest (e.g., encumbrance) in the Property and notified such parties of the Grantor's(s') intention to enter into this Environmental Covenant;

v. that the Grantor(s) has[have] complied with all public notice requirements in KRS 224.80-110.

vi. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Grantor(s) is[are] a party, by which Grantor(s) may be bound or affected.

vii. that this Environmental Covenant will not materially violate or contravene any zoning law or other law regulating use of the Property.

viii. that this Environmental Covenant does not authorize a use of the Property that is otherwise prohibited by a recorded instrument that has priority over the Environmental Covenant.

H. Compliance Enforcement. The terms of the Environmental Covenant may be enforced by the Kentucky Energy and Environment Cabinet or any person identified in KRS 224.80-200 in accordance with applicable law. Failure to timely enforce compliance with this Environmental Covenant or the use limitations contained herein by any person shall not bar subsequent enforcement by such person and shall not be deemed a waiver of the person's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Kentucky Energy and Environment Cabinet from exercising any authority under applicable law.

I. Modifications/Termination. This Environmental Covenant runs with the land and is perpetual, unless modified or terminated in accordance with KRS 224.80-180 or KRS 224.80-190. The term "Amendment" as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term "Termination" as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant. [The following persons hereby waive their right to consent to any modification or termination of this Environmental Covenant.]

J. Notices. Any document or communication required to be sent to Kentucky Energy and Environment Cabinet or the Director, Division of Waste Management under this Covenant shall be sent to:

Director, Division of Waste Management

Department for Environmental Protection
200 Fair Oaks Lane
Frankfort, KY 40601

K. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

L. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky.

M. Recordation. Within ten (10) business days after the date of the final required signature upon this Environmental Covenant, Grantor(s) shall file this Environmental Covenant in the county clerk's office in each county that contains any portion of the real property subject to this environmental covenant.

N. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the _____ County Clerk's Office.

O. Distribution of Environmental Covenant. The Grantor(s) shall within thirty (30) days of filing this Environmental Covenant in the _____ County Clerk's Office, distribute a file and date stamped copy of the recorded Environmental Covenant to the following persons: Director, Kentucky Division of Waste Management, City Administrator or Manager of the City of _____, Judge Executive of _____ county, every Holder of this Environmental Covenant, each person who is in possession of the Property, each person who holds a recorded interest in the Property, each person who signed this Environmental Covenant and _____ (any other person identified by the Cabinet).

P. Cabinet and Division References. All references to the Kentucky Energy and Environment Cabinet and the Kentucky Division of Waste Management shall include successor agencies/departments/divisions or other successor entities.

[Property owner(s)] has[have] caused this Environmental Covenant to be executed pursuant to KRS Chapter 224.80-100 to KRS 224.80-210 on this ____ day of _____, 200__.

IN TESTIMONY WHEREOF, the parties have hereunto set their hands this the day and year first above written.

[Signature of Property owner] (Grantor)

Date

(Name of Holder) Grantee

Date

(Name of Other Persons with
Interests in the Property)
Subordinator of Interest to Covenant

Date

STATE OF KENTUCKY)
)
COUNTY OF _____)

The foregoing Environmental Covenant [and attached Subordination Agreement]
was acknowledged before me by _____, [Name of each Grantor], this
the ____ day of _____, 20__.

Notary Public

My Commission Expires: _____

STATE OF KENTUCKY)
)
COUNTY OF _____)

The foregoing Environmental Covenant [and attached Subordination Agreement]
was acknowledged before me by _____, [Name of each Subordinator
of Interest], this the ____ day of _____, 20__.

Notary Public

My Commission Expires: _____

[illegible]

The foregoing Environmental Covenant [and attached Subordination Agreement] was acknowledged before me by _____, [Name of each Grantee], this the ____ day of _____, 20__.

Notary Public

My Commission Expires: _____

This instrument prepared by:

KENTUCKY ENERGY AND ENVIRONMENT CABINET

This Environmental Covenant is hereby approved by the Kentucky Energy and Environment Cabinet this ____ day of _____, 200__.

By: _____
[NAME], Director, Division of
Waste Management

Date

STATE OF KENTUCKY)
)
COUNTY OF _____)

The foregoing Environmental Covenant [and attached Subordination Agreement] was acknowledged before me by _____, [NAME, Director, Division of Waste Management], this the ____ day of _____, 20__.

Notary Public

My Commission Expires: _____

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF _____)

I, _____, Clerk of the
_____ County Court, do certify that the foregoing Environmental
Covenant was lodged in my office for record, and that I have recorded it, and the
certificate thereon, this _____ day of _____, 200__.

County Clerk

SUBORDINATION AGREEMENT

[Name of Interest Holder] (hereinafter "Subordinator of Interest"), of [address], [county], [State], is the holder of a [type of interest, lien, mortgage, easement, etc] granted by _____ to _____, dated _____ and recorded with the _____ County Clerks Office in [Deed, Lis Pendens, etc.] Book _____, Page _____.

[Name of Interest Holder] hereby assents to the grant of this Environmental Covenant granted by (Property Owner) to (Grantees i.e. Holders) and recorded with the _____ County Clerk in Deed Book _____, Page _____ [to be filled in upon recordation simultaneously with filing of Environmental Covenant] [Or to the grant of the attached Environmental Covenant granted by (Grantor) to (Grantees, i.e. Holders)] and agrees that the [type of interest] shall be subject to said Environmental Covenant and to the rights, covenants, restrictions and easements created by and under said Environmental Covenant insofar as the interests created under the [type of interest] affect the Property or Impacted Area identified in the Environmental Covenant and as if for all purposes said Environmental Covenant had been executed, delivered and recorded prior to the execution, delivery and recordation and/or registration of the [type of interest].

The execution of this subordination agreement by [Name of Interest Holder] shall not subject such person to liability for environmental remediation pursuant to KRS Chapter 224, provided that such person shall not otherwise be liable for environmental remediation pursuant to Chapter 224.

The execution of this subordination agreement by [Name of Interest Holder] shall not be presumed to impose any affirmative obligation on the person with respect to said Environmental Covenant.

[Name of Interest Holder] act of subordinating his/her/its prior interest in the Property to said Environmental Covenant shall not affect the priority of that interest in relation to any other interests that exist in relation to the property.

[Name of Interest Holder] further assents specifically to the subsequent recordation and/or registration of a modification to the Environmental Covenant, in accordance with the terms as referenced in the Environmental Covenant and agrees that [type of interest] shall be subject to the Modified Environmental Covenant and to the rights, covenants, restrictions, and easements created thereby and there under insofar as the interests created under the [type of interest] affect the Property or Impacted Areas as so modified and as if for all purposes said Modified Environmental Covenant had been executed, delivered and recorded prior to the execution, delivery and recordation of the [type of interest].

[Name of Interest Holder] has caused this instrument to be executed this ____ day of _____, 200__.

Name of Interest Holder

Date

STATE OF KENTUCKY)
)
COUNTY OF _____)

The foregoing Subordination Agreement was signed, sworn to and acknowledged before me by _____, [Name of each Interest Holder], this the ____ day of _____, 20__.

Notary Public

My Commission Expires: _____

This document prepared by:

[To be added if not attached to the Covenant]

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF _____)

I, _____, Clerk of the _____ County Court, do certify that the foregoing Subordination Agreement was lodged in my office for record, and that I have recorded it, and the certificate thereon, this _____ day of _____, 200__.

County Clerk